IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6876 of 2002
And
SPECIAL CIVIL APPLICATION Nos 6878 and 6881 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

A.S. DARJI ADDITIONAL ASSISTANT ENGINEER

Versus

STATE OF GUJARAT

Appearance:
1. Special Civil Application No. 6876 of 2002
MR YN OZA, Sr.Counsel with MR BP GUPTA
for Petitioner No. 1
MR KOGJE, ASST. GOVERNMENT PLEADER
for Respondent No. 1-2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 07/05/2003

COMMON ORAL JUDGEMENT

#. By filing these petitions, the petitioners have challenged their suspension orders on various grounds. This Court (Coram: M.S.Shah,J) disposed of this group of petitions by passing the following order.:

"In these petitions under Article 226 of the Constitution, the petitioners, six in number, have challenged the orders dated 17-7-2002 suspending them from service.

2. Reply affidavit is filed by Under Secretary to the State Government in Narmada Water Resources and Water Supply Department to which rejoinder affidavit is also filed on behalf of the petitioners.

3. At the hearing of these petitions, Mr.Desai, learned AGP states under instructions of Mr.Raval, Officer in-charge of Inquiries in the Narmada Water Resources and Water Supply Department that the respondents will institute and complete inquiry against the petitioners by 31st January, 2003, provided the petitioners cooperate for expeditious disposal of the inquiry.

4. The respondents are directed to comply with the aforesaid statement with an observation that if, in spite of the cooperation to be extended by the petitioners, the respondents do not complete the inquiry, the petitioners will be at liberty to approach this Court for reviving these petitions at the final hearing stage and for interim mandatory orders of reinstatement by filing misc. civil applications.

5. In view of the aforesaid directions and liberty, Mr.Oza seeks leave to withdraw the petitions.

Leave as prayed for is granted.

Subject to the aforesaid, the petitions are disposed of as withdrawn.

Rule is discharged in each petition with no order as to costs."

However, thereafter, the inquiries were not over, and, thereafter, at the second stage, the matters were revived by order dated 21/2/2003. Para 7 of the said order reads as under.:

> "7. In view of the fact that the respondent-authorities did not even institute the departmental inquiry against the petitioners by issuing any chargesheet till 31/1/2003, the request for revival of the petitions does not appear to be unreasonable. Hence while relieving the respondents from the statement made on 21/10/2002 that the inquiry against the original petitioners will be instituted and completed by 31/1/2003 and while making it clear that the respondents are at liberty to institute and complete the inquiry within reasonable time, the common order dated 21/10/2002 permitting the original petitioners to withdraw the petitions is recalled and the petitions are restored at the stage at which they were withdrawn on 21/10/2002."

Now, the matters have come up before this Court for final hearing.

#. Mr.Y.N.Oza, learned Senior Counsel for the petitioners submitted that, in spite of the fact that time limit was given by this Court, yet the inquiries are still pending and hanging sword of departmental inquiry is continued since long. It is submitted that, even otherwise, as per the Rules, the Government is required to review the suspension order periodically, which is not done in these cases. On merits, it is submitted by Mr.Oza that survey was conducted by a committee of three persons and decision was taken by the members of the Committee after considering the facts and circumstances of the case, and that it cannot be said that the petitioners have committed any misconduct.

#. On behalf of the State Government, learned AGP, of course, tried to justify the order of holding the inquiry. He submitted that, it is, no doubt, true that the time limit given by this Court is over and the inquiry could not be completed, but, the same now will be completed within a reasonable period.

#. Considering the facts and circumstances of the cases, I am of the view that when the departmental inquiry is pending against the petitioners since long and that, of

course, earlier a statement was made before this Court that the same would be completed latest by 31/1/2003, these are not cases in which the suspension orders are required to be continued indefinitely. At this stage, it is submitted by the learned AGP for the State that the inquiry proceedings are already over and only final decision is awaited on the basis of the inquiry report.

#. Considering the aforesaid aspect of the matters, now, when the inquiry is over, and, now, when the final order is required to be passed by the Disciplinary Authority, without deciding these petitions on its own merits, it would be just and proper to direct the State Government to take the final decision in connection with the pending inquiry against the petitioners, latest by 5/6/2003. In case, no final decision is taken by the aforesaid date, the suspension order shall stand revoked with effect from 6/6/2003. However, if any final decision is taken, in between by 5/6/2003, naturally, the said final decision will take into account the entire controversy. However, in case, no final order is passed by the aforesaid date, the Government is directed to reinstate the petitioners in service with effect from 6/6/2003. It is clarified that this order is only in connection with the suspension order of the petitioners and it is not to be construed as if this Court has suggested anything in connection with the inquiry proceedings pending against the petitioners, as, it is for the authority to pass appropriate order on the basis of the inquiry report. Suffice it to say that if no final decision is arrived at in the pending inquiry, the respondents are directed to reinstate the petitioners from 6/6/2003 and the suspension orders shall stand revoked from the aforesaid date.

#. Subject to what is stated above, these petitions stand disposed of. Rule is discharged in each of these petition with no order as to costs. Liberty to apply in case of difficulty.

Registry to place copy of this order in all connected matters.

(P.B.Majmudar,J)
(pathan)